Major Forms of Maladministration

6.1 As in 2003/04, this year complaints against "error, wrong decision/advice" (24.0%) topped the list of cases concluded, followed by "failure to follow procedures, delay" (9.4%). In other words, the public sees these as the two most common forms of maladministration. Meanwhile, complaints found to be substantiated or partially substantiated by full investigation[1] were commonly "failure to follow procedures, delay" (27.9%), closely followed by "disparity in treatment, unfairness" (21.6%). The six major categories of complaints, by nature of complaint, are listed in **Fig. 6.1**.

The Ombudsman's Recommendations

6.2 The Ombudsman Ordinance requires The Ombudsman to report findings, to give opinions with reasons and to make recommendations after an investigation. My recommendations fall broadly into two categories, namely :

(a) Redress of grievances –

to right specific wrongs, including remedial measures, immediate and longer-term;

(b) Administrative improvement –

to improve the administration of an organisation in general or in specific areas, such as changes to systems, procedures and practices for removing administrative errors, loopholes or deficiencies.

As a rule, I cannot and do not interfere with policies. I respect the relevant authorities as guardian of their policies. However, I do from time to time comment on policies, to help Government focus on possibly outdated aspects or to generate public debate.

Fig. 6.1

Nature of allegation/ maladministration identified	% among all concluded cases@	% among all acts of maladministration substantiated#
Error, wrong decision/advice	24.0%	9.9%
Failure to follow procedures, delay	9.4%	27.9%
Negligence, omissions	7.6%	9.9%
Disparity in treatment, unfairness	7.4%	21.6%
Lack of response to complaint	6.4%	8.1%
Faulty procedures	6.2%	5.4%

@ *A total of 5,023 were concluded in 2004/05, including cases outside jurisdiction, restricted or concluded after preliminary inquiries, mediation or full investigation (see Table 1).*

111 allegations were substantiated after full investigation in 2004/05.

1 As opposed to mediation and preliminary inquiries, which include INCH and RAC.

6.3 Although many complaints are directed against the actions or attitude of individual officers, our main objective is to enhance the quality of public administration. Accordingly, recommendations from our investigations are generally rehabilitative and preventive rather than punitive in nature. Rarely do we propose disciplinary action against individual officers — this is a matter for the heads of the organisations. In short, we aim to improve rather than to disapprove, to comment constructively and not to carp critically.

6.4 If an investigation report is, in my opinion, not adequately acted upon by the head of the organisation concerned, The Ombudsman Ordinance provides that I may submit my report and recommendations together with any further observations to the Chief Executive. I may also make a further report to the Chief Executive if I consider a serious irregularity or injustice to have taken place. Within one month or such longer period as the Chief Executive may determine, a copy of such further report shall be laid before the Legislative Council.

The Government Minute on Implementation

6.5 Since 1995, the Administration has been submitting a Government Minute to the Legislative Council within three months after the tabling of The Ombudsman's Annual Report. This summarises the follow-up actions taken by the organisations concerned in implementing The Ombudsman's recommendations. It is a measure of the seriousness with which the Administration views the role and recommendations of The Ombudsman in promoting open and fair, responsive and responsible government.

Implementation of Recommendations

6.6 Properly conducted investigations and carefully considered recommendations are key to our work processes. An indicator of our achievement is the number of recommendations for improvement made by me and adopted for implementation by the organisations. In the 2004/05 reporting year, my Office completed full investigation of 125 cases and five direct investigations, with 198 and 72 recommendations respectively making a total of 270. 263 (or 97.4%) of them have been accepted by the organisations concerned; 6 (or 2.2%) are still under consideration. Each recommendation, when implemented, should result in improvement to public administration and better service to the community.

6.7 However, I am only too well aware that even the best-intentioned and most well-devised measures ultimately rest on the organisations concerned. Here, I refer to the determination of the leadership and the cooperation of the corporate whole.

6.8 This year, we concluded 1,873 cases after preliminary inquiries, including 209 cases by INCH and 1,664 by RAC, with a total of 181 suggestions for remedial actions or administrative improvement. We note that oftentimes organisations would conduct its own internal audit and even introduce improvement measures in the course of our investigation. In such cases, we act practically as a catalyst for change. We welcome and appreciate such "headstart" by the organisations. In this connection, we must pay tribute to complainants for bringing their cases forward, thus contributing to the improvement of public services.

Fig. 6.2

Number of Recommendations

Year*	From complaint investigation	From direct investigation	Total
2000/01	131	59	190
2001/02 (10 1/2 months)	166	70	236
2002/03	173	72	245
2003/04	121	88	209
2004/05	198	72	270

* *The period of the Reporting Year has changed since 2001/02 (see footnote to Table 1).*

Enhancement of Quality Administration

6.9 In implementing our recommendations and suggestions, the organisations concerned enhance public administration and improve services. The following are examples in a number of areas.

(1) Guidelines for clarity, consistency or efficiency in operation

Complainant had suffered financial loss as a result of a criminal act by an individual, who was subsequently successfully prosecuted. The court made a criminal bankruptcy order against the individual, with Complainant named as a creditor. The order, in written form, then had to be prepared by the prosecution or an interested party, for signing by the judge and then sealed. However, a year passed with no order being prepared by any party. Complainant was lost as to how to follow up the order.

Our inquiry noted that, although Complainant's solicitors could have prepared the order, the prosecution, viz the Department of Justice ("D of J"), should be best placed to do this. Yet, no procedure was laid down for this. On our suggestion to review procedures, D of J issued a Legal Circular requiring all prosecution counsel to prepare the order, subject to any other direction from the court. They should also give appropriate notification to creditors named in the order.

(2) Better arrangements for inter-departmental co-ordination

Complainant was greatly disturbed by the noise from festive activities late at night. He had complained to the Leisure and Cultural Services Department ("LCSD") and the Environmental Protection Department ("EPD") but, as the activities were for local traditions, the two departments only took advisory action. As a result, the nuisance remained unabated.

On our suggestion, LCSD established a joint task force with EPD, the Home Affairs Department and the Police. They worked out guidelines and action plans

with the festival organisers to ensure that the activities concluded by 11 p.m.

(3) Measures for better public enquiry/ complaint handling

Complainant had complained against a Government department to the General Office of the Chief Executive's Office ("GOCEO"). In an interim reply, GOCEO said it had referred the matter to the relevant bureau for direct reply but did not identify which bureau. On receiving no substantive reply after a long while, Complainant considered GOCEO had not taken his complaint seriously.

Our inquiry found that after receiving the complaint, GOCEO had indeed referred the case to the relevant bureau but, owing to some misunderstanding, the bureau failed to reply. For greater transparency and accountability, we suggested GOCEO to indicate the relevant bureau or department giving the substantive reply. GOCEO accepted this arrangement.

(4) Training for staff

Complainant was the defendant in a Labour Tribunal claim filed by her ex-employee. Allegedly, in the pre-hearing conciliation, the tribunal officer had proposed terms of settlement on her behalf but without her consent. As this involved professional judgment and not administration, we did not pursue. Still, we conveyed Complainant's dissatisfaction to the Judiciary Administrator ("JA") and suggested conciliation training for tribunal officers.

JA accepted our suggestion and arranged conciliation training for nine of their tribunal officers. Thereafter, JA deployed six of them specifically to handle conciliation and provided suitable briefing for them.

(5) Measures for better services

Complainant bid for a shop unit in the commercial complex of a public housing estate but was unsuccessful. He later found that the successful bidder did not rent the shop unit, which then remained vacant for about half a year. Thereafter, Complainant again bid for other shop units of the commercial complex and had similar experience.

Our "inquiry" elsewhere found the Housing Department ("HD") too tolerant of procrastinating tactics of successful bidders, including dishonoured cheques, and slow on re-tendering of shop units. On our recommendation, HD introduced new measures to counter such tactics: including accepting only cash or cashier orders rather than personal cheques, increasing the amount of non-refundable deposits, accepting the second highest bidder when the successful bidder failed to rent the shop unit, streamlining the procedures for re-tendering and reminding staff to enforce strictly the terms and conditions of the tender documents.

(6) Clearer information to the public

Complainant made an appointment, through the Immigration Department ("ImmD") website, for changing his Identity Card ("ID card") to smart ID card. However, when he went to the specified ImmD office (Kowloon Office) on due date, the staff there told him that such service was not available there and suggested he go to a designated office.

Our inquiry found that the relevant page of the ImmD website cited two types of

appointments: one for applying for new ID cards, re-issue of ID cards or changing personal data on the ID card; and the other for changing to smart ID cards. Complainant had mistakenly made an appointment for new ID card. To guide citizens better, ImmD accepted our suggestion to improve its website.

6.10 Apart from improving the quality of public administration, our work has also helped to safeguard human rights. Hong Kong abides by a number of international human rights treaties including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Like our counterparts overseas, this Office has an important duty to promote and protect human rights, particularly for the vulnerable such as inmates in institutions under the Correctional Services Department ("CSD").

6.11 We have received complaints from such inmates on a variety of issues alleging threat to safety, inadequate medical care, unfair treatment, frequency of visits, screening of incoming materials and personal comforts. Though some of the allegations may not be supported by concrete evidence, we are mindful of the fact that the inmates are kept in an enclosed environment without normal access to information and other resources. We, therefore, handle all such complaints with due care and compassion. This year, we completed a full investigation which resulted in recommendations to CSD for strengthening security measures to protect inmates from being attacked by peers.

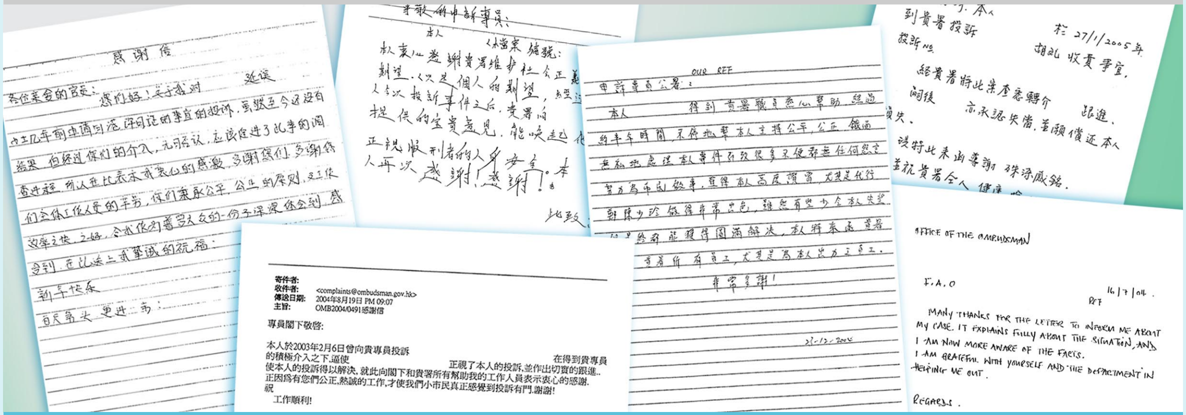
Comments on Our Services

6.12 From time to time, complainants address us with their comments about our findings or our procedures and practices. Invariably, we conduct internal audit, revising our operations where appropriate. We regard constructive comments on our services as reminders for review and reform.

6.13 Occasionally, we receive messages of appreciation from complainants and organisations, e.g. on the thoroughness and impartiality of our investigations (**Fig. 6.3**). We value such encouragement and we endeavour to further improve our services.

Fig. 6.3

Extracts from letters of appreciation



Positive Complaint Culture

6.14 Unquestionably, complaints originate from grievance or dissatisfaction but this does not render complaints necessarily a negative product. A complaint made in good faith is due exercise of a citizen's rights. A valid complaint enables Government to re-visit policies, procedures and practices with The Ombudsman as referee. Complaints are opportunities to review and revamp, redress and reform. Public administration should evolve, develop and progress. Both the public and the Administration should realise, and appreciate, the positive value of criticism and complaints about deficiencies in the public service. The examples in para. 6.9 are but a few instances in illustration.

6.15 In our efforts to promote a positive complaint culture within both the Administration and our community at large, we have devoted much time and resources to activities for public awareness and education. These are described in **Chapter 7**.